

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

INSWEB CORPORATION, LEADPOINT,)	Civil No.08CV447-WQH(LSP)
INC., INTERNET BRANDS, INC., and)	
AUTO INTERNET MARKETING, INC.,)	
)	NOTICE AND ORDER FOR EARLY
Plaintiffs,)	NEUTRAL EVALUATION AND CASE
)	MANAGEMENT CONFERENCE
v.)	
)	
AUTOBYTEL, INC., AUTOBYTEL I)	
CORP., fka AVV, INC., DOMINION)	
ENTERPRISES, RETENTION)	
PERFORMANCE MARKETING, INC., and)	
ONECOMMAND, INC.)	
)	
Defendants.)	

IT IS HEREBY ORDERED that an Early Neutral Evaluation ("ENE") of your case will be held on August 25, 2008, at 2 p.m. before United States Magistrate Judge Leo S. Papas, United States Courthouse, Courtroom G, First Floor, 940 Front Street, San Diego, California.

Pursuant to Rule 16.1(c) of the Local Rules of the United States District Court for the Southern District of California, both counsel and the parties who have full and unlimited authority¹

¹ "Full authority to settle" means that the individuals at the settlement conference must be authorized to fully explore settlement options and to agree at that time to any settlement terms acceptable to the parties. Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648 (7th Cir. 1989). The person needs to have "unfettered discretion and authority" to change the settlement position of a party. Pitman v. Brinker Intl., Inc., 216 F.R.D. 481, 485-486 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement authority to attend the conference includes that the person's view of the case may be altered during the face to face conference. Id. at 486. A limited or a sum certain of authority is not adequate. Nick v. Morgan's Foods, Inc., 270 F.3d 590 (8th Cir. 2001).

1 to negotiate and enter into a binding settlement shall appear in person at the conference and shall be
2 prepared to discuss the claims, defenses and damages. Where the suit involves the United States or
3 one of its agencies, only counsel for the United States with full settlement authority need appear. All
4 conference discussions will be informal, off the record, privileged and confidential.

5 Patent L.R. 2.1.a requires that an ENE take place within 60 days of the filing of the first
6 answer. Requests to continue ENEs are rarely granted. However, the Court will consider formal,
7 written *ex parte* requests to continue an ENE conference when extraordinary circumstances exist that
8 make a continuance appropriate. In and of itself, having to travel a long distance to appear in person
9 is not “extraordinary.” **Absent extraordinary circumstances, requests for continuances will not**
10 **be considered *unless* submitted in writing no less than seven (7) days prior to the scheduled**
11 **conference.**

12 The parties may submit a short Confidential Early Neutral Evaluation Conference
13 Statement prior to the conference. The parties are also encouraged to lodge with Magistrate Judge
14 Papas' chambers a chronology, setting forth a timeline of the factual events that are the basis for the
15 claims and defenses asserted in this litigation. If submitted, the chronology should be in a chart or
16 column format with the column headings “DATE” and “EVENT” and may be annotated with
17 documents significant to the facts or issues.

18 Pursuant to Patent L.R. 2.1.a, the Rule 26(f) conference shall be completed no later than
19 21 days before the ENE.

20 Any objections made to initial disclosures pursuant to Federal Rule of Civil Procedure,
21 Rule 26(a)(1)(A-D) are overruled, and the parties are ordered to proceed with the initial disclosure
22 process. Any further objections to initial disclosure will be resolved as required by Rule 26. The date
23 of initial disclosure pursuant to Rule 26(a)(1)(A-D) shall occur no later than 7 days before the ENE;

24 The parties' Federal Rule of Civil Procedure Rule 26(f) discovery plan including the topics
25 set forth in Patent L.R. 2.1.b.1-4 shall be lodged with Magistrate Judge Papas no later than 7 days
26 before the ENE;

27 In the event the case does not settle at the Early Neutral Evaluation Conference, the parties
28 shall also be prepared to participate in a Case Management Conference, pursuant to Federal Rule of

1 Civil Procedure 16(b).

2 **Plaintiff's counsel shall notify all Defendants that have not yet made an appearance**
3 **in the case of the date and time of the Early Neutral Evaluation and Case Management**
4 **Conference.** Questions regarding this case may be directed to the Magistrate Judge's research
5 attorney at (619) 557-6384.

6 DATED: July 8, 2008

7
8 
9 Hon. Leo S. Papas
U.S. Magistrate Judge